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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36258]

Dover and Delaware River Railroad, LLC—Lease with Interchange Commitment and Trackage Rights Exemption—Norfolk Southern Railway Company and New Jersey Transit Corporation

Dover and Delaware River Railroad, LLC (DDRR), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to (1) lease from Norfolk Southern Railway Company (NS) and operate 27.2 miles of rail lines (the Leased Lines),¹ and (2) operate pursuant to a trackage rights agreement among DDRR, NS, and New Jersey Transit Corporation (NJT) over 80.7 miles of rail lines (the Trackage Lines), all in the State of New Jersey.

The Leased Lines run (i) between milepost WD 58.0 at Hackettstown and milepost WD 80.3 at Phillipsburg; (ii) between milepost 66.5 TG at Washington and milepost 67.6 TG at Washington; (iii) between milepost PQ 21.4 at Mountain View and milepost PQ 22.2 at Wayne; and (iv) between milepost TO 18.0 at Totowa and milepost 21.0 at Wayne.

The Trackage Lines run (i) between milepost 7.8 at Newark Broad Street and milepost 48.1 at Netcong; (ii) between milepost 48.1 at Netcong and milepost 58.0 at Hackettstown; (iii) between milepost 20.1 at Summit and milepost 25.7 at Berkeley Heights; and (iv) between milepost 9.0 at Newark Roseville Avenue and milepost 33.9 at Denville.

¹ Attached to its notice, DDRR included a Confidential Appendix containing an unexecuted copy of its lease with NS. On December 14, 2018, DDRR filed a supplement to its Confidential Appendix with an executed copy of the lease.

This transaction is related to a concurrently filed verified petition for exemption in Kean Burenga & Chesapeake & Delaware, LLC—Continuance in Control Exemption—Dover & Delaware River Railroad, LLC, Docket No. FD 36259, in which Kean Burenga and Chesapeake and Delaware, LLC seek the Board's approval to continue in control of DDDR upon DDDR's becoming a Class III rail carrier.

DDRR states that NS currently provides freight service on the Lines. DDDR further states that NS owns the Leased Lines, and NJT owns the Trackage Lines, over which NS holds a residual freight easement and trackage rights. DDDR represents that, upon consummation of the transaction, it will become the freight operator on the Lines.

DDRR certifies that its projected annual revenues from this transaction will not result in the creation of a Class I or Class II rail carrier and will not exceed \$5 million. As is required under 49 C.F.R. § 1150.33(h)(1), DDDR discloses in its verified notice that its lease agreement with NS for the Leased Lines contains an interchange commitment that will affect interchange with carriers other than NS on the Leased Lines. DDDR has provided additional information regarding the interchange commitment as required under 49 C.F.R. § 1150.33(h). DDDR represents that the trackage rights agreement among it, NS, and NJT for the Trackage Lines does not contain an interchange commitment.

DDRR states that it will not commence operations on the Lines until the Board issues a decision on the concurrently filed verified petition for exemption in Docket No. FD 36259. The effective date of this lease and operation exemption will be held in abeyance pending review of the petition for exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than seven days before the exemption becomes effective; a deadline for filing petitions for stay will be established in a future decision that establishes an effective date for this exemption.

An original and 10 copies of all pleadings, referring to Docket No. FD 36258, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on DDDR's representative, Eric. M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to DDDR, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available on our website at www.stb.gov.

Decided: December 14, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings